



Legal Views

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A Resource From Montgomery County's Office of the County Attorney

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Child Abuse and Neglect Proceedings Overview

Roberta Wolcott

A child complains at school that his back hurts. Staff discovers that he has several linear, raised, red marks across his shoulders and back. The child admits, upon questioning, that his mother whipped him with a plastic hanger the night before. Legally mandated to report any suspected child abuse, the school contacts Child Protective Services (CPS) and so begins an investigation.

Reports of alleged abuse or neglect are screened by CPS and then assigned to an assessment social worker for investigation, based on the nature of the alleged maltreatment. For example, if the allegation involves child sexual abuse, the case will be assigned to a specially trained social worker who usually conducts a joint investigation with detectives from the Family Crimes Division of the Police Department. Physical abuse victims must be

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Search Warrants: To Knock or Not to Knock

Anne T. Windle

Imagine you are a police officer with reliable information that drugs are being dealt from a particular apartment. You also learn that the male resident has an extensive arrest record, including second-degree murder and criminal possession of a weapon. You seek a search warrant and, based on the male resident's criminal record, also seek authorization for no-knock entry. The judge grants both the search warrant and the no-knock entry. Subsequently, you forcibly enter the apartment without first announcing yourself, execute the search warrant, and find a large amount of crack cocaine, cash, marijuana, and a loaded semi-automatic handgun.

At trial, the defense makes a motion to suppress the drugs and gun, alleging that exigent circumstances did not exist to justify the no-knock search and that the so-called good faith exception cannot excuse this defect. Does all the evidence you collected during the search get excluded from trial? Recently, the United States Court of Appeals for the Fourth Circuit said "no."

The Supreme Court previously has held that the Fourth Amendment generally requires police to knock and identify themselves and their purpose before forcibly entering a dwelling. The Court has also carved out an exception, allowing no-knock entry in exigent circumstances, such as threat of physical violence to officers.

In this case, the Fourth Circuit found that exigent circumstances may not have existed, since Singleton's conviction for second degree murder and criminal weapon possession dated to the mid 1980s and his only recent conviction, in 2000, was for marijuana

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interviewed within 24 hours. In addition to conducting interviews of family members and witnesses, the worker may provide referrals for services or, in extreme cases, have the child removed from the home on an emergency basis.

The social worker has 60 days by statute to conclude the investigation. If an alleged maltreater is identified, a due process right to an administrative hearing before an administrative law judge is triggered. The person will be listed as an abuser or neglecter in a confidential computer database maintained by CPS, called the “Central Registry.” This registry is accessible only by certain designated authorities under statute, such as the police or those charged with child and foster care licensing. Nevertheless, the suspected maltreater can request a hearing to contest his/her name being placed on the list.

The hearings are held at the local Department of Social Services (the Department of Health and Human Services in Montgomery County) before an administrative law judge employed by the state Office of Administrative Hearings. Following the hearing, the administrative law judge has 45 days to issue a written decision affirming, modifying, or ruling out the local department’s finding. If the local Department’s finding is affirmed, the Appellant may be listed as a maltreater in the Central Registry and the Department may keep the investigative file indefinitely. The Appellant has the option to file an appeal of the administrative law judge’s decision to the Circuit Court. If the finding is modified or ruled out, the Department is required to destroy the file after a certain period of time set by statute, unless reports of abuse or neglect are brought against the maltreater before that time period has elapsed. If so, the time period for expungement of the file begins to run anew.

Ultimately, the process is a battle between the alleged maltreater’s right to a day in court to “protect” his/her name and the local department’s desire to maintain a history of maltreaters which can be used to protect children from additional maltreatment in the future. ❖

possession and importation and driving on a revoked license. Nonetheless, the Fourth Circuit found that it did not need to determine whether exigent circumstances existed in this case because of the good faith exception, which applied in this case.

The Supreme Court first articulated the good faith exception over 20 years ago, holding that reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate is admissible even if the warrant is ultimately found to be defective.

The Fourth Circuit held that the good faith exception was applicable to no-knock warrants. The police, in executing the no-knock search warrant on Singleton’s apartment, reasonably relied in good faith upon a properly obtained search warrant that specifically authorized the no-knock entry. Accordingly, the Fourth Circuit affirmed Singleton’s conviction. ❖

United States of America v. Anthony Singleton, No. 04-4108 (4th Cir., March 23, 2006).

Traffic Stop Delay

Jerome A. Nicholas, Jr.

The Court of Appeals recently held that a police traffic stop, delayed by a computer glitch, did not violate a passenger’s Fourth Amendment Rights under the U.S. Constitution and the Maryland Declaration of Rights.

A Prince George’s County police officer lawfully stopped a vehicle in which a passenger was riding. Both the driver and passenger provided the officer with driver’s license information and the vehicle’s registration card. Due to a computer malfunction, it took approximately 30 minutes for the officer to verify the information. During the wait, a police K-9 unit arrived on the scene. A dog sniff of the vehicle alerted the officers that illegal drugs were in the vehicle. The officers found the illegal drugs and arrested both motorists.

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Information is the Oxygen of a Democracy

Joanne Brown

One of the most visible features of Montgomery County government is an array of Commissions and Boards. Through these Commissions and Boards, Montgomery County offers the public opportunities to participate directly in decisions that affect the community. For those of us who work with Commissions, as lawyers or staff, the following are a few observations and suggestions about their “care and feeding.”

1. Service on a public Commission is rewarding, often exceeding all previous expectations of members and staff, including lawyers.
2. A Commissioner cannot participate in a matter if the Commissioner has an economic interest in that matter. This prohibition against conflict of interest signifies more than just an important protection for the public, the prohibition is necessary for maintaining the integrity of the Commission’s decision-making process.
3. Every assemblage of people, like a Commission, has a culture and the culture may extend beyond

changes in chairpersons, resignations of members, and new appointments. This can be good or bad in the short term, but recognizing the existence of a culture is always important and something to keep in mind as a topic for discussion with the Commission when the opportunity arises.

4. Resignations and new appointments are not only opportunities to think about individual training and the mission of the Commission, but should be seen as an opportunity to “retrain” the entire Commission.
5. Staff members need to be mindful of rules regarding attendance. Commissioners who miss 25% of meetings within a year are automatically removed from office under County law, unless the appointing authority (usually the County Executive) waives removal. Commissioners need to be reminded that they are performing an important service to the public, they are appreciated, and, if unable to perform at the level they originally intended, resignation and service at another time is an appropriate alternative.
6. The composition of the Commission may include some or many people who have not participated before in group decision-making, or fact finding, or even being in a position to receive information that is intended to persuade. Therefore, in order to insure full participation, this disparity in experience should be acknowledged, discussed, and the chairperson and staff should make additional efforts to encourage full participation.
7. Remember, Commission activity is a process and patience and respect for the views for all involved reap tremendous benefits in a democracy. ❖

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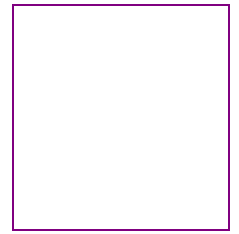
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Legal Views is a monthly newsletter prepared as part of the County Attorney’s preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.





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ADDRESS CORRECTION REQUESTED

Traffic Stop

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The Court held that the delay in verifying the information did not support a violation of the passenger's Constitutional rights, as the officer was "diligent" in his attempt to verify the information supplied by the motorist. The Court noted that the officer attempted to call another source to obtain the verification and that the officer even called the other source back a couple of times while waiting for a reply. The Court said that the "length of a detention" may support a Constitutional violation, but it did not occur in this instance. The officer's conduct was reasonable under the circumstances and no Constitutional violation occurred.

It is important to note that a diligent officer attempting to properly investigate a matter during a traffic stop will be justified in any delay of a driver or passenger. But, if the delay is merely a pretext or subterfuge, the length of the detention may be evidence of a constitutional violation. ❖

Byndloss v. State of Maryland, Court of Appeals, No. 54, September Term, 2005 (March 8, 2006).

